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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA ✓

2010 MAY 21 PM 2:48

JEANNE JACKS, CLERK
S. KELBAUGH

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER

Defendant.

CAUSE NO. P1300CR20081339

STATE'S MOTION FOR SANCTIONS
AGAINST ATTORNEY CHRIS DUPONT
AND
REQUEST FOR JURY POOL
EXAMINATION

(EXPEDITED RULING REQUESTED)

Assigned to Hon. Thomas Lindberg
Div. 6

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her Chief Deputy undersigned, hereby files its Motion for Sanctions Against Attorney Chris Dupont and Request for Jury Pool Examination (herein after "Motion"). This Motion is based upon the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Facts

On October 29, 2009, Attorney Christopher B. Dupont (herein after "Dupont") entered a Notice of Appearance for Charlotte Rose DeMocker. On November 13, 2009, Dupont entered separate Notices of Appearance for Katherine Gray DeMocker and again for Charlotte Rose DeMocker. As this Court is well aware, these are the two daughters of the victim, Carol Kennedy, and thus are victims in this matter. Additionally, they are the daughters of Defendant

1 DeMocker. Dupont has been receiving notification of all proceedings from the Victim Services
2 Division of the Yavapai County Attorney's Office since he became their attorney.

3 On May 21, 2010, the Arizona Republic published an article on page one of its newspaper
4 (See Exhibit #1) as well as its online version (Exhibit #2) (collectively referred herein after as
5 "Article"). The last paragraph of the Article states:

6
7 DuPont said Charlotte Democker (sic) finally was granted a private audience last
8 month with Yavapai County Attorney Sheila Polk, who listened as Charlotte's
9 representatives asked for dismissal of the death-penalty petition. When the
10 session ended, Dupont said, Polk made a quip about the length of the presentation.
11 "That was it," Dupont said. "Her response to the whole thing was to make a joke
12 about the death penalty, right in front of Charlotte's face."

13 Although the article, and in particular this paragraph, contains a number of inaccuracies
14 and assertions (including the fact that this Office is not complying with Victims' Rights), the
15 purpose of this Motion is to seek appropriate sanctions against a licensed attorney for gross
16 ethical violations, not to try to correct a newspaper for its inaccuracies.

17 County Attorney Sheila Polk never made such a comment. She never made a joke about
18 the death penalty in this or any other matter. Dupont has intentionally mislead the reporter and
19 thus the public about the facts of this meeting.

20 Additionally, an attorney of Dupont's experience should have been aware that such
21 statements may have been viewed by present or prospective jurors in the midst of jury selection
22 and the inevitable trial. Such conduct by a licensed attorney cannot be ignored or tolerated by
23 this Court and must be dealt with swiftly and severely.

24 **Points and Authorities**

25 Ethical Rule 4.1 of Rules of Professional Conduct, contained in Rule 42, Arizona Rules of
26 the Supreme Court (herein after "ER") very clearly provides:

Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact . . . to a third person

Dupont's ethical violation is further aggravated by the fact that he told his lie to a reporter for a major Arizona newspaper, knowing or having reason to know that it would be widely distributed. ER 3.6 provides in pertinent part:

Trial Publicity

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

That is exactly what Dupont did in this matter. Additionally, Dupont knew that the jury selection process had begun or was about to begin at the time he told his lie. It appears that he made this false statement with the intent to influence a prospective jury pool in a death penalty case. His egregious conduct simply cannot be overlooked by this Court. Failing to do so invites a public response pursuant to ER 3.6(c), which could cause further litigation in this matter. The appropriate sanctions by this Court would negate that necessity.

Conclusion

Based upon the foregoing, the State requests the following:

- 1) An examination of the jury pool to determine whether or not this Article was viewed, and if so, the Court to determine the appropriate remedy for the State and Defendant;
- 2) To issue a "gag order" on Dupont to prevent future incidents of this nature during this very long trial process;
- 3) To otherwise sanction Dupont for his serious ethical violations and his duty to this Court and the profession;

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

- 1 4) If Dupont denies making the statement and/or restates that it is true, the State requests
2 an evidentiary hearing to present evidence to the Court for its determination of the
3 facts and sanctions;
4 5) Any other relief the Court finds appropriate under the circumstances.
5

6 **RESPECTFULLY SUBMITTED** this 21st day of May, 2010.

7 **Sheila Sullivan Polk**
8 **YAVAPAI COUNTY ATTORNEY**

9 By: Dennis M. McGrane
10 Dennis M. McGrane
11 Chief Deputy County Attorney

12
13 COPIES of the foregoing delivered this
14 21st day of May, 2010 to:

15 Christopher B. Dupont
16 Trautman Dupont, PLC
17 245 W. Roosevelt, Suite A
18 Phoenix, AZ 85003
19 (via email and mail)

20 Honorable Thomas J. Lindberg
21 Division 6
22 Yavapai County Superior Court
23 (via email)

24 John Sears
25 107 North Cortez Street, Suite 104
26 Prescott, AZ 86301
Attorney for Defendant
(via email)

Office of the Yavapai County Attorney

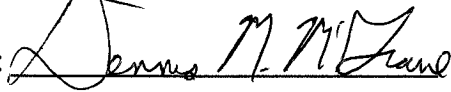
255 E. Gurley Street, Suite 300

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Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Larry Hammond
2 Anne Chapman
3 Osborn Maledon, P.A.
4 2929 North Central Ave, 21st Floor
5 Phoenix, AZ
6 Attorney for Defendant
7 (via email)

8 By:



THE ARIZONA REPUBLIC

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Daughters' rights complicate murder case

They believe father, accused of bludgeoning mother, is innocent

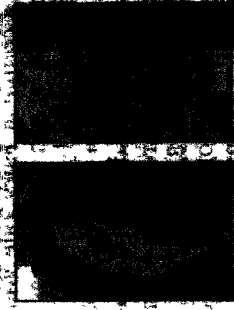
By Dennis Wagner
THE ARIZONA REPUBLIC

PRESCOTT — There is a reason Katie and Charlotte Democker want the man accused of murdering their mother out of jail.

The daughters is their father,

Steven Democker, who is now on trial in a case that could lead to the death penalty if the wealthy investment adviser is convicted.

Yavapai County sheriff's deputies gathered enough circumstantial evidence to file charges in a murder case that has been in the news for nearly two years ago. They say Steven, 56,



Carol

Daughters side with jailed dad

MURDER CASE

Continued from A12

"We were talking about starting to date again," he said. "I loved Carol."

Asked where he'd been, Steven told deputies he had gotten a flat tire while mountain biking on dirt trails, starting 1½ miles from his wife's house, at 6:30 p.m., ending 10 miles away and three hours later.

As the interview continued, Steven wondered aloud: "So, I'm a suspect?"

At Kennedy's house, deputies noticed loosened lightbulbs in the laundry room. They took impressions of footprints near the house leading to bicycle tracks that stopped about 100 yards away.

At the same time, Yavapai County Medical Examiner Philip Keen was examining the body. He observed indentations in Kennedy's head that might have been left by a golf club.

With that information, and while Steven was still being questioned, investigators returned to his house. Pictures taken in his garage during the first visit, hours earlier, showed a golf-club cover on a shelf in the garage. When they returned, however, the cover was gone.

The investigation dragged on for weeks. Detectives found that Steven was the beneficiary of Kennedy's life-insurance policies, worth \$750,000. They contacted experts who said tracks at the scene were similar to treads on Steven's bike tires, but not a conclusive match. They learned that the shoe prints were of the same type as a pair Steven once owned.

On Oct. 23, 2008, after nearly three months, detectives arrested Steven Democker in Phoenix at his UBS Financial Services office, where he worked as a financial adviser, taking home \$300,000 to \$500,000 a year. Steven, who had no history of violence, asked how deputies could believe that he "just suddenly erupted in a blind rage after 5½ years of relatively amicable separation."

Deputies asked about the missing golf-club cover. Steven said he did not remove the item from his garage. He said he found it one day later, in a friend's car, and gave it to his attorney. Without elaborating, he added, "There is an explanation."

During the arrest, detectives told Steven they knew he'd applied for a replacement passport by claiming the original was lost, when in fact he had surrendered it to authorities. They asked him to explain his purchase of books with titles such as "How To Disappear Until You Want To Be Found." They also wondered why his motorcycle was packed for travel, with a map of Mexico.

Steven said he had no alibi and feared arrest, so, in a time of panic, he made plans to abscond. "It was stupid, fear-based stuff,"

he said.

Defense lawyers, in turn, accuse police and prosecutors of blindly focusing on the ex-husband and not looking at Kennedy's tenant, whom they say was involved with drug trafficking.

Opposite sides of the courtroom

During jury selection last week in court, Ruth Kennedy listened attentively beside a Yavapai County victim's advocate, awaiting the day she will testify against her former son-in-law.

As the hearing proceeded, Charlotte slipped into the courtroom. Spotting her grandmother, the teenager flashed a smile and gave a tender hug.

Later, Ruth returned to a seat reserved for victims. Charlotte followed, walking past her grandmother to a bench behind the defense table, backing her dad.

Under Arizona law, the Democker sisters are guaranteed treatment with dignity and a right to confer with prosecutors. According to court records, however, the daughters were blocked from contact with their father for weeks after his arrest and pressured to renounce their rights as victims. Prosecutors declined to comment for this story.

Dupont, the lawyer for the daughters, said state lawyers feared they might be a conduit of information to the defense. As recently as April, he complained to the court that his clients' rights were being violated and that prosecutors "tried to punish the girls for taking a contrary position."

Keli Luther, senior counsel for the non-profit Arizona Voice for Crime Victims, said there are occasional cases where children of defendants are at odds with the state's attorney. Unlike other witnesses, victims are entitled to attend court proceedings, receive police reports and request information from prosecutors.

"It makes it more challenging," Luther said. "But they still have a constitutional right to protect, whether it's awkward or not."

Richard Lougee Jr., a Tucson attorney, said prosecutors take advantage of the law when victims are gung-ho for a conviction.

"But when the victim backs off and doesn't want blood," he added, "very often a prosecutor will simply cut them out of the process."

Dupont said Charlotte Democker finally was granted a private audience last month with Yavapai County Attorney Sheila Polk, who listened as Charlotte's representatives asked for dismissal of the death-penalty petition. When the session ended, Dupont said, Polk made a quip about the length of the presentation. "That was it," Dupont said. "Her response to the whole thing was to make a joke about the death penalty, right in front of Charlotte's face."

Daughters, with fights as victims, side with dad

MURDER CASE

Continued from A1

searched the Internet for information on how to disguise a homicide and bought books on how to disappear as a fugitive afterward.

"The circumstantial evidence against defendant is overwhelming," deputies say in court papers.

The sisters say their dad is not guilty — a position that puts them at odds with prosecutors in a legal battle over their rights as crime victims.

"My father, my dad, is the most compassionate, supportive, brilliant man I know," Charlotte, now 18, wrote in a prepared statement to the judge, provided to *The Arizona Republic* by her attorney. "If there is one thing I just know, it is my father is not capable of what he is accused of."

Under the Victim's Bill of Rights, a constitutional amendment adopted by Arizona voters in 1990, the young women are entitled to confer with prosecutors about decisions in the case. But, because the sisters are aligned with the defense, the Yavapai County Attorney's Office pressed them to renounce their rights, then declined communications with them.

Chris Dupont, the sisters' attorney, said they want no publicity but have been thrust into a constitutional controversy. "This is not a story about them having to choose sides," Dupont added. "They loved their mother. They love their father. And they believe he is innocent."

Steven Democker's trial is now in its third week of jury selection in Prescott. Testimony is expected to last three months, with more than 100 witnesses scheduled.

None of them will place Steven at the scene. Neither his fingerprints nor DNA was found. The murder weapon is missing.

Still, deputies gathered reams of information and statements which, they say, prove that he used a Callaway No. 7 Big Bertha III golf club to end years of financial feuding with Kennedy, whom he had recently divorced.

Defense attorneys Larry Hammond and John Sears answer in court papers that Steven had no financial motive to kill his ex-wife. They say police botched the investigation. And they point out that DNA from three unidentified men, not Steven, was found beneath the victim's fingernails.

Grim death of Carol Kennedy

Kennedy, a psychotherapist, painter and

former Prescott College faculty member, lived alone in a house on North Bridle Path, in an oak-dotted rural neighborhood a few miles north of Prescott.

Court records describe the final day of her life:

On July 2, 2008, she completed an evening jog through the hills and sat down for a phone call with her mother in Nashville.

Ruth Kennedy told detectives her daughter mentioned Steven's failure to pay alimony and discussed plans to see a lawyer. Twenty minutes into the conversation, at 7:59 p.m., there was an exclamation — "Oh, no!" — and the line went dead.

Ruth tried calling back but got no answer. She phoned other relatives. She dialed Steven, leaving a message. Finally, she contacted the Sheriff's Office.

More online

A closer look at the key factual disputes in the murder case: news.azcentral.com.

A deputy arrived at the house and pointed his flashlight through a window, illuminating Carol Kennedy's body on the floor in a pool of blood. Someone had toppled a bookcase and moved a ladder to make it appear she had fallen.

The autopsy found Kennedy's skull was fractured in 50 or more places by at least seven blows, consistent with the strike of a golf club.

"The severity of the injuries suggests her attacker was in a rage," a search-warrant affidavit notes. "Rage often suggests a relationship between the attacker and the victim."

Moments after the body was found, Charlotte, then 16, arrived at the house with her boyfriend. Charlotte was on a cell-phone with her dad when deputies advised that her mother was dead. She dropped the phone.

A deputy began speaking with Steven, who explained that family members had asked him to check on his ex-wife, but he sent Charlotte because he didn't feel comfortable doing it.

Steven then asked about his daughter: "She hasn't... what kind of state is Carol in? She hasn't seen Carol, has she?"

After driving to the house, Steven volunteered that he and Kennedy had gone through a difficult divorce. He was paying \$6,000 a month to his ex-wife, plus most of a 401(k) valued at \$190,000. They had exchanged text messages earlier in the day, disputing the finances.

Still, Steven said he and his wife had chatted amicably over coffee a few days earlier.

Daughters' rights complicate murder case

by **Dennis Wagner** - May. 21, 2010 12:00 AM
The Arizona Republic

PRESCOTT - There is a reason Katie and Charlotte Democker want the man accused of murdering their mother out of jail.

The defendant is their father, Steven Democker, who is now on trial in a case that could lead to the death penalty if the wealthy investment adviser is convicted.

Yavapai County sheriff's deputies gathered enough circumstantial evidence to file charges in a murder mystery that has horrified, captivated and divided Prescott from day one. They contend that Steven savagely beat his ex-wife, artist Carol Kennedy, in her Williamson Valley home nearly two years ago. They say Steven, 56, searched the Internet for information on how to disguise a homicide and bought books on how to disappear as a fugitive afterward.

"The circumstantial evidence against defendant is overwhelming," deputies say in court papers.

The sisters say their dad is not guilty - a position that puts them at odds with prosecutors in a legal battle over their rights as crime victims.

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Exh. b. 1 #2

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